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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1980

NO. 80-5781

MANLIN SERVICE CORPORATION,

Plaintiff, Appe

vs.

LYLE H. PRENZLER M.D., et al.,

Defendants, Appellant.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Lyle H. Prenzler, hereby motions to proceed in Forma Pauperis and supports said motion under 28 U.S.C. 1915 by attached affidavit

Dated: September 4, 1980

LYLE H. PRENZLER, M.D.

715 East Chapman Avenue
Orange, California 92666
714 63 1701

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1979

No._____

MANLIN SERVICE CORPORATION,

Plaintiff, Appellee,

vs

A. B. ABARBANELL, M.D., etal.,
LYLE H. PRENZLER

DefendantsAppellant.

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JURISDICTIONAL

STATEMENT

RULE OF SUPREME COURT

RULE 15, 12

QUESTIONS PRESENTED

1. Whether the Insurance Commissioner of the State of California acting under color of California Insurance Code Para 1391, 1396 to order assessment of appellant singly, was not acting against the class of defendants, joined with private individuals of the plaintiffs and with National Indemnity Corporation of Omaha, Nebraska, Casualty Indemnity Corporation and Glacial Indemnity Corporation of Missouri and Montana, respectively, to violate protected rights and may be held responsible under civil rights statutes? Were such acts of non-federal defendants as alleged, carried out under color of state law; and cross-claim conspiratorially denied under color st te law for failure to notify and to serve summons with complaint upon the appellant? and Statute Limitations?
2. For purposes of 28 U.S.C. 1343(3), were actions of state officials which are not required by state law: under color of state law by virtue of official nature of action taken?
3. Were the actions of above referred to parties as alleged conduct a denial of due process and equal protection engaged in under color of state law if clothed with authority of state and if individual is purported to act thereunder, whether or not complained of conduct was authorized by state law?
4. Were the conduct of above parties as the defendants or cross-

defendants not named, there exist other co-conspirators, who in concert with the defendants and cross-defendants, did those things which the defendants ane cross-defendants are alleged to have done, acted in combination and conspiracy with intention and effect of the aforementioned conspiracy to deprive Plaintiff of his basic constitutional rights under the Constitution and laws of the United States, including the following: (a) his rights to due process; (b) his rights to free speech and association; (c) his rights to equal protection under the laws, all in violation of 42 paragraph 1983 and 1985, and 28 U.S.C. 1331 and 1343 to redress injuries to appellant?

5. Were the parties of the above ~~parties~~ indispensable to this action and without their joinder, did the court lose subject matter and personal jurisdiction of the appellant for abuse of discretion and failure to amend? Had Statute of Limitations run as to filing?CCP583.

LIST OF ALL PARTIES

As this is an action brought singly against the appellant and supposedly by the pleading not a class action, a list of all parties will not be included as it is lengthy; unless requested by the Court.

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California Civil Procedure 418.10, 413.10, Insurance Code 1391---- 2

OFFICIAL & UNOFFICIAL REPORTS

This action was begun by filing of a class action suit in the Superior Court of Los Angeles County California by Robert Reaves, M.D. vs. Gleason L. Payne, Insurance Commissioner of the State of California and Wesley Klinder, pro tem antes as case No. C98979 in September 1974 and findings of Honorable Lester E. Olson, presiding, March 1977 that Insurance Commissioner did not abuse discretion by proceeding to order assessment pursuant to Insurance Code 1391. Action in same matters filed in same Court No. C114418 on February 26, 1976 as a Complaint for Assessment which was not served upon Appellant and special appearance denied quash summons

under CCP 418.10, and dismissal denied from which appeal taken in December 1979, and dismissed on appeal to Court of Appeals State of California 2nd District without specification when Court could not locate papers requested in Designated Record of Appeal by Appellant and denial of Hearing by Supreme Court State of California on August 6, 1980; and Notice of Appeal in the Court of Appeals of the Second District, filed on August 18, 1980. All Reports are appended.

JURISDICTION

This Appeal is filed and these proceedings are instituted under 28 U.S.C. 2101(c), 2104, 1343, 1331, 1335, 1337, to redress injuries sustained by Appellant as a result of violations by the Appellees of the Clayton and Sherman Act in restraint of interstate trade and California Statutes, California Insurance Code 1391. This Court has pendent jurisdiction over these claims since they arise from a common nucleus of operative facts with the federal claims. This Court also has jurisdiction under 28 U.S.C. 1331 & 1343 to redress injuries sustained by Appellant as a result of violations by Appellees of 42 U.S.C. 1983 and 1985. This Complaint also alleges causes of action for interference with advantageous contractual relations and this Court has pendent jurisdiction over these claims since they arise from a common nucleus of operative facts with the federal claims.

The cases believed to sustain the jurisdiction are:

1. River v. Richmond Metropolitan Authority(1973,DC Va) 359 F.Supp. 611;
2. White v. Matthews (DC SD) 420 F.Supp. 882;
3. Brooks v. Peters (1971 DC Wis) 322 F.Supp.1273.

INVOLVED CONSTITUTIONAL PROVISIONS, STATUTES

The due process clause of the Fourteenth Amendment and the right to free choice under the First Amendment are involved.

FOURTEENTH AMENDMENT:

Section 1. All persons born or naturalized in the United States, and subject to the juridiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person

of life, liberty, or prope ty, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FIRST AMENDMENT:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridoing the freedom of speech, or of the press or the right of people peacably to assemble, and to petition the government for redress of grievances.

28 U.S.C. 1343, 42 U.S.C. 1983 & 1985 appended as are California Insurance Code 1391, California Code Civil Procedure 581, 418.10. 413.10

STATEMENT OF THE CASE

This case for assesssment for insurance against each defendant and the Appellant personally, involved the conspiratorial acts under color of state statute by virtue of official nature of action taken whether or not authorized by state law, of a class of co-conspirators including, but not exclusively, the State of California Commissioner of Insurance, an insurer of insurance, a reinsurerer of insurance who had been certified as not requiring reinsurance by the same Commissioner of Insurance; by the Appellant, and denying cross-claims by Appellant under guise of failure to serve with Summons and notification, and resignation from case of attorney for Appellant less than one month prior to trial and within less than a month of the running of State of California Statute of Limitations of five years to bring to trial; and thereby Appellant denied rights privileges and immunities under the U.S. Constitution, Acts Congress, statutes especially as provided under civil rights statutes, but other cited above; and Appellees as Cross-Defendants thus denied for redress and Appellant's cause meritorious. Joinder of indispensable parties denied as in FRCP Rule 21 and therefore the Court has no subject matter jurisdiction for failure to joined parties whose interests, rights, will inevitably be affected by any decree which can be rendered, and whose testimony at trial would be conditioned by their ... monetary interests and privilege from prosecution and for avoiding piecemeal litigation and for inconvenience of all parties in multidistrict litigation.

the stage of the proceedings at which questions sought to be reviewed were raised were the filing of class action C98979 in which it was ruled that the Insurance Commissioner did not abuse discretion by ordering the assesssment, when it was the same Commissioner's decision that the company of defendants did not require reinsurance, and the subsequent filing of C114418 was in the same cause and involved the same claims and thus under interpleader statutes and Rules. The named Insurance Companies and the Commissioner of Insurance were indispensable parties whose testimony in or lack of joinder might forever affect the outcome of trial on the issues, and be involved in such outcome. On December 1, 1979, the Appellant received notification that his attorney would not represent him and Appellant asked for quah summons for failure to serve with Summons and for lack of jurisdiction of court over him, in December 13, 1979 denied, and the tolling of Statute of Limitations of five years from filing forever prevents bringing in cross-defendants of Insurance Companies and Insurance Commissioner and thus deprives Appellant of due process under color state statute, and such date was February 26, 1980.

STATEMENT OF REASONS

QUESTIONS ARE SUBSTANTIAL

The cited actions and decisions in the State Courts by state officials and private individuals and companies acting in concert to deprive the Appellant as a U.S. Citizen of rights privileges and immunites by conspiracy, as in the United States Constitution, Acts of Congress and statutes and regualtions and have so injured by intent and purpose the Appellant, and Appellant is entitled to redress which has been denied by the conspiracy of co-conspirators, to deny equal protection of the laws, and acts under color state statutes repugnant to the Constitution. The constitutional challenges are substantial as raised by this appeal, and important to all citizens affected by such statutes--present or future, and such as to bring the rulings and case within the jurisdictional provisions relied on and the cases cited. 50 U.S.C. 510-590 is applicable to stay.

CONCLSHION

For all these reasons this case shuld be reviewed on its merits.

Dated: August 26, 1980

LYLE H. FRENZLER IN PRO SE
715 E. Chapman Ave. Orange Ca 926

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

ATTN:

I have this day filed Order

In re: 2 Civ. *No.* 59246

Manlin Service Corp.

vs.

Abarbanel

Respectfully,

Clerk

72076 877 7.75 4M OSP

Los Angeles, Cal. _____ 19____

TITLE { Martin Frisco
A. J. ABARBANEL } No. 59276

PETITION FOR REHEARING DENIED.

CLAY ROBBINS, *Clerk*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ROBERT G. REAVES, M.D., individually and on behalf of certain California physician subscribers to Casualty Indemnity Exchange, a Missouri Reciprocal insurer,

Petitioner/Plaintiff,

vs.

WESLEY J. KINDER, Insurance Commissioner of the State of California; and MANLIN SERVICE CORPORATION, a Missouri Corporation, Attorney-in-Fact for Casualty Indemnity Exchange,

Respondent/Defendants.

CASE NO. C.98979

NOTICE OF INTENDED DECISION

The relief requested by plaintiff is denied.

Framing the claim as one for declaratory relief does not really change the fact that plaintiff seeks to upset the Insurance Commissioner's actions in connection with the assessment.

The Court agrees with the defense position that in order to reduce plaintiff's assessment the Court must find that the Commissioner abused his discretion by proceeding to order the assessment pursuant to Insurance Code section 1391. The evidence fails to establish an abuse of discretion.

The Court finds that the total assessment of $3,572,927.93 was appropriately calculated by the Commissioner, and accordingly plaintiff's prorata share is likewise correct.

Plaintiff has pointed to no cases that are really supportive of his position, and the Court has found none. The likelihood is that the situation that developed in March, 1974 and culminated in the Loss Fund Agreement with Glacier General Assurance Company is unique and no closely comparable appellate cases exist. To accept the plaintiff's position in this case would require this Court to "second guess" the actions of the Commissioner in the absence of any showing of arbitrary conduct or conduct which was an abuse of discretion. This would be unsupported by any appellate cases of which this Court is aware.

Counsel for defendants shall prepare a Judgment in accordance herewith and, if demanded, Findings of Fact and Conclusions of Law.

DATED: October 28, 1976.

Lester E. Olson

Lester E. Olson
JUDGE OF THE SUPERIOR COURT

LYLE H. PRENZLER,
715 East Chapman Avenue
Orange, California 92666
714 639 1701

AUG 18 1980

CLERK

COURT OF APPEALS OF THE STATE OF CALIFORNIA FOR THE SECOND DISTRICT

MANLIN SERVICE CO.

Plaintiff,

vs.

A.B. ABARBANEL, M.D.

Defendants.

NO. 59246

2nd CIV

NOTICE OF APPEAL

Lyle H. Prenzle , appeals the denial of hearing by he Supreme Court of the State of California to the Supreme Court of the United State and requests a copy of this Notice of Appeal be filed in the Court of Appeals for the State California 2nd District; August 9, 1980. AND CONFORMED COPY RETURNED IN ENCLOSED ENVELOPE

Dated: August 9, 1980

LYLE H. PRENZLER PRO SE